

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1094

Introduced by Assembly Member Conway

February 27, 2009

An act to amend Sections 1798.80, 1798.81, ~~and 1798.84~~ 1798.84, ~~and 1983~~ of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as amended, Conway. Disposal of personal information.

Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information that is no longer to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. Existing law provides for specified civil remedies for a violation of these provisions.

This bill would, instead, require a business to take all reasonable steps to dispose, or arrange for the disposal, of an individual's records within its custody or control containing personal information when the records are no longer to be retained by the business by taking any of the actions described above. ~~A violation of this provision would be punishable as a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.~~ The bill would *exempt from these provisions information that is made available to the general public from federal, state, or local government records. The bill would provide that a cause of action shall not lie against a business that comes into*

possession of abandoned records containing personal information and that disposes of those records in accordance with these provisions. *The bill would set forth findings regarding records that end up in the possession of a storage company or commercial landlord, and would provide that it is the intent of the Legislature to create a safe harbor for such a record custodian who properly disposes of the records.*

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Existing law requires a landlord, if personal property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, to give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property, as specified.

This bill would provide that, if the property consists of records, the tenant shall be deemed to be the owner of the property.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1798.80 of the Civil Code is amended
- 2 to read:
- 3 1798.80. The following definitions apply to this title:
- 4 (a) "Business" means a sole proprietorship, partnership,
- 5 corporation, association, or other group, however organized and
- 6 whether or not organized to operate at a profit, including a financial
- 7 institution organized, chartered, or holding a license or
- 8 authorization certificate under the law of this state, any other state,
- 9 the United States, or of any other country, or the parent or the
- 10 subsidiary of a financial institution. The term includes an entity
- 11 that disposes of records.
- 12 (b) "Records" means any material, regardless of the physical
- 13 form, on which information is recorded or preserved by any means,
- 14 including in written or spoken words, graphically depicted, printed,
- 15 or electromagnetically transmitted. "Records" does not include
- 16 publicly available directories containing information an individual

1 has voluntarily consented to have publicly disseminated or listed,
2 such as name, address, or telephone number.

3 (c) “Customer” means an individual who provides personal
4 information to a business for the purpose of purchasing or leasing
5 a product or obtaining a service from the business.

6 (d) “Individual” means a natural person.

7 (e) “Personal information” means any information that identifies,
8 relates to, describes, or is capable of being associated with, a
9 particular individual, including, but not limited to, his or her name,
10 signature, social security number, physical characteristics or
11 description, address, telephone number, passport number, driver’s
12 license or state identification card number, insurance policy
13 number, education, employment, employment history, bank account
14 number, credit card number, debit card number, or any other
15 financial information. *“Personal information” does not include*
16 *publicly available information that is lawfully made available to*
17 *the general public from federal, state, or local government records.*

18 SEC. 2. Section 1798.81 of the Civil Code is amended to read:

19 1798.81. A business shall take all reasonable steps to dispose,
20 or arrange for the disposal, of an individual’s records within its
21 custody or control containing personal information when the
22 records are no longer to be retained by the business by (a)
23 shredding, (b) erasing, or (c) otherwise modifying the personal
24 information in those records to make it unreadable or
25 undecipherable through any means.

26 SEC. 3. Section 1798.84 of the Civil Code is amended to read:

27 1798.84. (a) Any waiver of a provision of this title is contrary
28 to public policy and is void and unenforceable.

29 (b) Any individual injured by a violation of this title may
30 institute a civil action to recover damages.

31 (c) In addition, for a willful, intentional, or reckless violation
32 of Section 1798.83, a customer may recover a civil penalty not to
33 exceed three thousand dollars (\$3,000) per violation; otherwise,
34 the customer may recover a civil penalty of up to five hundred
35 dollars (\$500) per violation for a violation of Section 1798.83.

36 (d) Unless the violation is willful, intentional, or reckless, a
37 business that is alleged to have not provided all the information
38 required by subdivision (a) of Section 1798.83, to have provided
39 inaccurate information, failed to provide any of the information
40 required by subdivision (a) of Section 1798.83, or failed to provide

1 information in the time period required by subdivision (b) of
2 Section 1798.83, may assert as a complete defense in any action
3 in law or equity that it thereafter provided regarding the information
4 that was alleged to be untimely, all the information, or accurate
5 information, to all customers who were provided incomplete or
6 inaccurate information, respectively, within 90 days of the date
7 the business knew that it had failed to provide the information,
8 timely information, all the information, or the accurate information,
9 respectively.

10 (e) Any business that violates, proposes to violate, or has
11 violated this title may be enjoined.

12 ~~(f) Every business, including any employee or agent thereof,~~
13 ~~that knowingly disposes of records containing personal information~~
14 ~~in violation of Section 1798.81 is guilty of a misdemeanor and~~
15 ~~shall be punished, upon conviction, by a fine, by imprisonment in~~
16 ~~the county jail not to exceed one year, or by both a fine and~~
17 ~~imprisonment.~~

18 ~~(g)~~

19 (f) (1) A cause of action shall not lie against a business that
20 comes into possession of abandoned records containing personal
21 information and that disposes of those records in accordance with
22 Section 1798.81.

23 (2) *The Legislature finds and declares that, when records*
24 *containing personal information are abandoned by a business,*
25 *they often end up in the possession of a storage company or*
26 *commercial landlord. It is the intent of the Legislature in*
27 *paragraph (1) to create a safe harbor for such a record custodian*
28 *who properly disposes of the records in accordance with Section*
29 *1798.81.*

30 ~~(h)~~

31 (g) A prevailing plaintiff in any action commenced under
32 Section 1798.83 shall also be entitled to recover his or her
33 reasonable attorney's fees and costs.

34 ~~(i)~~

35 (h) The rights and remedies available under this section are
36 cumulative to each other and to any other rights and remedies
37 available under law.

38 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

7 *SEC. 4. Section 1983 of the Civil Code is amended to read:*

8 1983. (a) Where personal property remains on the premises
9 after a tenancy has terminated and the premises have been vacated
10 by the tenant, the landlord shall give written notice to ~~such the~~
11 tenant and to any other person the landlord reasonably believes to
12 be the owner of the property. *If the property consists of records,*
13 *the tenant shall be deemed to be the owner of the property.*

14 (b) The notice shall describe the property in a manner reasonably
15 adequate to permit the owner of the property to identify it. The
16 notice may describe all or a portion of the property, but the
17 limitation of liability provided by Section 1989 does not protect
18 the landlord from any liability arising from the disposition of
19 property not described in the notice except that a trunk, valise,
20 box, or other container which is locked, fastened, or tied in a
21 manner which deters immediate access to its contents may be
22 described as such without describing its contents. The notice shall
23 advise the person to be notified that reasonable costs of storage
24 may be charged before the property is returned, where the property
25 may be claimed, and the date before which the claim must be made.
26 The date specified in the notice shall be a date not less than 15
27 days after the notice is personally delivered or, if mailed, not less
28 than 18 days after the notice is deposited in the mail.

29 (c) The notice shall be personally delivered to the person to be
30 notified or sent by first-class mail, postage prepaid, to the person
31 to be notified at his *or her* last known address and, if there is reason
32 to believe that the notice sent to that address will not be received
33 by that person, also to ~~such~~ any other address, ~~if any,~~ known to
34 the landlord where ~~such the~~ person may reasonably be expected
35 to receive the notice. If the notice is sent by mail to the former
36 tenant, one copy shall be sent to the premises vacated by ~~such the~~
37 tenant.

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